

REMARKS/ARGUMENTS

Claims 24-31, 33-41, and 43-48 are currently pending in this application. By prior correspondence, Claims 1-23, 32 and 42 were canceled, Claim 24 was amended, and Claims 45-48 were added.

In this response, claim 24 has been amended for clarification of the claimed invention. Claims 47 and 48 are cancelled. Support for these amendments can be found in the specification and in particular, the amendment of claim 24, for example, can be found at page 18, lines 12 – 14 and page 20, lines 31-34.

The amended claims set is provided herewith. No new matter has been added by this amendment.

Rejection Under 35 U.S.C. § 112

Claims 24-31, 33-41, and 43-48 have been rejected as being indefinite under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Applicant has removed the language “substantially free of added proteins, and hydrocolloids” from Claim 24. Claims 25-31, 33-41, and 43-46 depend from Claim 24. Additionally, claims 47 and 48 have been cancelled. Claim 47 contained the language “high potency non-nutritive carbohydrate sweetening agent” and claim 48 depended therefrom. Entry of this amendment and withdrawal of this rejection is respectfully requested.

Rejection Under 35 U.S.C. § 103(a)

Claims 24-31, 33-41, and 43-48 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Amen et al. (U.S. Patent No. 4,851,239) in view of Norris ((U.S. Patent No. 3,671,459) and Jackson (WO 81/00061).

Claim 24 has been amended for clarification of the claimed invention. Entry of this amendment and withdrawal of this rejection is respectfully requested.

Applicants wish to direct the Examiner's attention to the basic requirement of a prima facie case of obviousness as set forth in the MPEP §2143. This section states that to establish a prima facie case of obviousness, three basic criteria first must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references (or references when combined) must teach or suggest all the claim languages.

These references, alone or in combination, fail to teach or suggest the subject matter of amended claim 24 and claims 25-31, 33-41, and 43-46 depending therefrom.

Amen et al. discloses a shelf-stable aerosol dispensable yogurt product. Whereas, the present invention discloses a shelf-stable aerated milk composition. The Examiner states that Amen et al. discloses a shelf-stable aerated product, in fact Amen et al. merely discloses "yogurt and yogurt-containing products to be prepared as shelf-stable aerosol dispensable formulations useful as desserts and as toppings" (see Amen et al. page 3, lines 19-23).

The references, whether alone or in combination, do not provide a reasonable expectation of success in producing "a low density aerated milk composition . . . wherein the aerated milk composition contained within a package has within 24 to 48 hours a finished density of about 0.56 g/cc to 1.0 g/cc for up to 60 days at atmospheric pressure." Amen et al. does

suggest that a whipped yogurt foam can be produced after the product as described in Amen has been dispensed from the aerosol container. However, there is no suggestion in the references, whether alone or in combination, that a whipped yogurt foam so produced in Amen et al. will have a density or the shelf stability as claimed in the present invention.

Moreover, the present invention is not suitable for an aerosol dispenser as described in Amen et al., as the present invention would be in an aerated state within the aerosol dispenser and upon dispensing from the dispenser the present invention aerated structure would collapse, thereby producing an undesirable result. Whereas the yogurt product of Amen et al., whether alone or in combination with the other references, does not produce a "whipped foam" until dispensed from the pressurized dispenser.


Furthermore, there is no suggestion that the product in Amen et al., whether alone or in combination with the other references, would produce a product as claimed in the present invention regardless of if the Amen et al. product is held in a pressurized or atmospheric pressure state.

Applicants respectfully request reconsideration and withdrawal of the obviousness rejections based on Amen/Norris/Jackson. Early notice of allowability is kindly requested. Please contact the undersigned if it will assist in expediting prosecution of these claims.

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Respectfully Submitted,


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